

Prepared By and Return To:
Peake Law Group, PC
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14241 Midlothian Turnpike, Suite 216
Midlothian, VA 23113

Tax Map Parcel(s): 5400020000H

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT dated as of September __, 2020 (the "Effective Date") evidences that an Economic Development Agreement was made and entered into as of September __, 2020 (the "Agreement"), by and among **LEE HALL PLAZA, INC.**, a Virginia corporation and its assigns (the "Company" and "GRANTOR"), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF COLONIAL HEIGHTS, VIRGINIA**, a Virginia political subdivision (the "Authority" and "GRANTEE"), pertaining to the redevelopment of the property known as 401 Temple Avenue (as further described below, the "Site") in the City of Colonial Heights, Virginia (the "City"), the terms and conditions of which are incorporated by this reference.

The Agreement provides that the Company shall record a Declaration of Easements, Covenants and Restrictions ("Declaration") over the Site, which is more particularly described on the attached **Exhibit A**, which Declaration shall include a covenant prohibiting certain uses on the Site as more particularly described on the attached **Exhibit B**. The Declaration is a portion of the material consideration for the Authority's obligations under the Agreement.

Effective with the recordation of this Memorandum of Agreement, none of the Prohibited Uses in **Exhibit B** shall be constructed or operate on the Site.

This Memorandum of Agreement is prepared for the purpose of providing notice to prospective owners and occupants of the Site and shall not alter or affect in any way the rights and obligations of the Company and the Authority under the Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement or caused it to be executed by their duly authorized representatives as of the day and year set forth below.

COMPANY/GRANTOR:

LEE HALL PLAZA, INC., a Virginia corporation

By: _____
Daniel Hargett, Vice President

COMMONWEALTH OF VIRGINIA)
CITY/COUNTY OF _____)

On this ____ day of September, 2020, Daniel Hargett, as Vice President of LEE HALL PLAZA, INC., a Virginia corporation, personally appeared before me and executed the foregoing instrument on behalf of the corporation.

Notary Public

AFFIX SEAL

My commission expires: _____
Registration No. _____

AUTHORITY/GRANTEE:

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF COLONIAL HEIGHTS,
VIRGINIA, a Virginia political subdivision

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA)
CITY/COUNTY OF _____)

On this ____ day of September, 2020, _____, as
_____ of the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF
COLONIAL HEIGHTS, VIRGINIA, a Virginia political subdivision, personally appeared before
me and executed the foregoing instrument on behalf of the Authority.

Notary Public

AFFIX SEAL

My commission expires: _____
Registration No. _____

AND

SEAL
Economic Development Authority

By: _____
Name: _____
Title: Secretary

COMMONWEALTH OF VIRGINIA)
CITY/COUNTY OF _____)

On this ____ day of September, 2020, _____, as
_____ of the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF
COLONIAL HEIGHTS, VIRGINIA, a Virginia political subdivision, personally appeared before
me and executed the foregoing instrument on behalf of the Authority.

Notary Public

AFFIX SEAL

My commission expires: _____
Registration No. _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: City Attorney

Exhibit A
To Memorandum of Agreement
Property Description

All that land lying and situate in the City of Colonial Heights, Virginia contained in "Amended Plat showing a Re-Combination and Consolidation of all of Block C and H, Lots 1-18 Block E, Gregory Subdivision and portions shown hereon of vacated Elko Avenue and Prince Albert Avenue lying south of Temple Avenue and East of Hamilton Avenue, City of Colonial Heights, Virginia," recorded in the Clerk's Office of the Circuit Court of the City of Colonial Heights, Virginia, in Plat Book 7 at Pages 25-26.

Less and except land taken in the Certificate of Take recorded in the Colonial Heights Circuit Court on June 12, 2015 in Deed Book 313, Page 593 and depicted In Plat Book 7, Page 28 and State Highway Plat Book 2, Pages 188-190.

BEING the same real estate conveyed to Kroger Limited Partnership I, an Ohio limited Partnership by Deed from The City of Colonial Heights, Virginia dated November 6, 2015, recorded November 9, 2015 in the Clerk's Office of the Circuit Court of Colonial Heights City, Virginia in Deed Book 319, Page 775.

Exhibit B
To Memorandum of Agreement

Prohibited Uses*

Residential use types:

- Home occupation
- Multi-family dwelling

Civic use types:

- Assisted care residence
- Club
- Correction facility
- Crisis center
- Cultural services
- Education facilities, college/university
- Education facilities, primary/secondary
- Governmental service
- Guidance service
- Halfway house
- Life care facility
- Nursing home
- Park and ride facility
- Post office
- Public assembly
- Public maintenance and service facility
- Public parks and recreational areas
- Religious assembly
- Safety service
- Utility service, major
- Utility service, minor

Office use types:

- Financial institution
- Laboratory
- Substance abuse clinic

Commercial use types:

- Adult use
- Agricultural service
- Antique shop
- Assembly hall
- Automobile dealership, new
- Automobile dealership, used
- Business support service
- Business/trade schools
- Consumer repair service
- Dance hall
- Day care center
- Flea market

- Funeral service
- Kennel, commercial
- Itinerant merchant
- Laundry
- Manufactured home sales
- Mobile food unit
- Modular home sales
- Pawn shop
- Personal improvement service
- Personal services
- Private farmer's market
- Recreational vehicle sales and service
- Studio, fine arts
- Studio, tattoo
- Travel center

Industrial use types:

- Construction yard
- Custom manufacturing
- Recycling center
- Transportation terminal
- Truck terminal

Miscellaneous uses:

- Amateur radio tower
- Parking facility, surface/structure
- Tower

*The Prohibited Uses shall have the following definitions, meanings, or descriptions, which are the definitions, meanings, or descriptions specified in Chapter 286 of the Colonial Heights City Code as of the Agreement Date:

§ 286-202.04 **Residential use types.**

HOME OCCUPATION

An accessory use of a dwelling unit for gainful employment involving the production, provision, or sale of goods and/or services in accordance with Article **IV**, Use and Design Standards.

MULTI-FAMILY DWELLING

A building or portion thereof which contains three or more dwelling units for permanent occupancy, regardless of the method of ownership. Included in the use type would be garden apartments, low and high rise apartments, apartments for elderly housing and condominiums.

§ 286-202.06 **Civic use types.**

ASSISTED CARE RESIDENCE

An establishment, regulated by the Commonwealth of Virginia, that provides shelter and services which may include meals, housekeeping, and personal care assistance primarily for the elderly. Residents are able to maintain a semi-independent lifestyle, not requiring the more extensive care of a nursing home.

CLUB

A use providing meeting or social facilities for civic or social clubs, and similar organizations and associations, primarily for use by members and guests. Recreational facilities, unless otherwise specifically cited in this section, may be provided for members and guests as an accessory use. This definition shall not include fraternal or sororal organizations associated with colleges or universities. A club does not include a building in which members reside.

CORRECTION FACILITY

A public or privately operated use providing housing and care for individuals legally incarcerated, designed to isolate those individuals from a surrounding community.

CRISIS CENTER

A facility providing temporary protective sanctuary for victims of crime or abuse including emergency housing during crisis intervention for individuals, such as victims of rape, child abuse, or physical beatings.

CULTURAL SERVICE

A library, museum, or similar public or quasi-public use displaying, preserving and exhibiting objects of community and cultural interest in one or more of the arts or sciences.

EDUCATIONAL FACILITY, COLLEGE/UNIVERSITY

An educational institution authorized by the Commonwealth of Virginia to award associate, baccalaureate or higher degrees.

EDUCATIONAL FACILITY, PRIMARY/SECONDARY

A public, private or parochial school offering instruction at the elementary, junior and/or senior high school levels in the branches of learning and study required to be taught in the public schools of the Commonwealth of Virginia.

GOVERNMENTAL SERVICE

A governmental office providing administrative, clerical or public contact services that deal directly with the citizen. Typical uses include federal, state, City, town and county offices.

GUIDANCE SERVICE

An establishment providing counseling, guidance, recuperative, or similar services for persons requiring rehabilitation assistance or therapy for only part of a twenty-four-hour day. This use type shall not include facilities operated for the treatment of drug addiction or substance abuse.

HALFWAY HOUSE

An establishment providing residential accommodations, rehabilitation, counseling, and supervision to persons suffering from alcohol or drug addiction, to persons reentering society after being released from a correctional facility or other institution, or to persons suffering from similar disorders or circumstances.

LIFE CARE FACILITY

A residential facility primarily for the continuing care of the elderly, providing for transitional housing progressing from independent living in various dwelling units, with or without kitchen facilities, and culminating in nursing home type care where all related uses are located on the same lot. Such facility may include other services integral to the personal and therapeutic care of the residents.

NURSING HOME

An establishment providing bed care and in-patient services for persons requiring regular medical attention but excluding a facility providing surgical or emergency medical services and excluding a facility providing care for alcoholism, drug addiction, mental disease, or communicable disease. Nursing homes have doctors or licensed nurses on duty.

PARK AND RIDE FACILITY

A publicly owned short-term parking facility for commuters.

POST OFFICE

An establishment providing postal services directly available to the consumer operated by the United States Postal Service.

PUBLIC ASSEMBLY

A facility owned and operated by a public or quasi-public agency accommodating public assembly for sports, amusement, or entertainment purposes. Typical uses include auditoriums, sports stadiums, convention facilities, fairgrounds, and sales and exhibition facilities.

PUBLIC MAINTENANCE AND SERVICE FACILITY

A public facility supporting maintenance, repair, vehicular or equipment servicing, material storage, and similar activities including street or sewer yards, equipment services centers, and similar uses having characteristics of commercial services or contracting or industrial activities.

PUBLIC PARK AND RECREATIONAL AREA

Publicly owned and operated parks, picnic areas, playgrounds, indoor or outdoor athletic facilities, and open spaces.

RELIGIOUS ASSEMBLY

An establishment located in a permanent building and providing regular organized religious worship and related incidental activities, except primary or secondary schools and day care facilities.

SAFETY SERVICE

A facility for the conduct of safety and emergency services for the primary benefit of the public, whether publicly or privately owned and operated, including police and fire protection services and emergency medical and ambulance services.

UTILITY SERVICE, MAJOR

Services of a regional nature which normally entail the construction of new buildings or structures such as generating plants and sources, electrical switching facilities and stations or substations, water towers and tanks, community wastewater treatment plants, and similar facilities. Included in this use type are also electric, gas, and other utility transmission lines of a regional nature which are not otherwise reviewed and approved by the Virginia State Corporation Commission.

UTILITY SERVICE, MINOR

Services which are necessary to support existing and future development within the immediate vicinity and involve only minor structures. Included in this use type are distribution lines and small facilities that are underground or overhead, such as transformers, relay and booster devices, and well, water and sewer pump stations. Also included are all major utility services that were in existence prior to the adoption of this chapter.

§ 286-202.08 Office use types.

FINANCIAL INSTITUTION

An establishment that provides financial and banking services to consumers or clients. Walk-in and drive-in services to consumers are generally provided on site. Typical uses include banks, savings and loan associations, savings banks, credit unions, lending establishments and freestanding automatic teller machines.

LABORATORY

An establishment primarily engaged in performing research or testing activities into technological matters. Typical uses include engineering and environmental laboratories, medical, optical, dental and forensic laboratories, x-ray services; and pharmaceutical laboratories only involved in research and development. Excluded from this use type are any laboratories which mass produce one or more products directly for the consumer market.

SUBSTANCE ABUSE CLINIC

An establishment which provides outpatient services primarily related to the treatment of alcohol, or other drug or substance abuse disorders, which services include the dispensing and administering of controlled substances and pharmaceutical products by professional medical practitioners as licensed by the Commonwealth of Virginia.

§ 286-202.10 Commercial use types.

ADULT USE

Any adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult motion picture arcade, adult model studio, or adult drive-in theater, as defined in this chapter.

ADULT BOOKSTORE

An establishment that devotes more than 15% of the total floor area utilized for the display of books and periodicals to the display and sale of the following: (a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, blue ray discs, compact discs, digital video discs, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas"; or (b) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." An adult bookstore does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock-in-trade and does not devote more than 15% of the total floor area of the establishment to the sale of books and periodicals, or photographs, films, motion pictures, blue ray discs, compact discs, digital video discs, video cassettes, slides, tapes, records, or other forms of visual or audio representations.

ADULT DRIVE-IN-THEATER

An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions, and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" for observation by patrons.

ADULT MINI-MOTION PICTURE THEATER

An establishment, with a capacity of more than five but less than 50 persons, where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons.

ADULT MODEL STUDIO

An establishment open to the public where, for any form of consideration or gratuity, figure models who display "specified anatomical areas" are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation, or institution which meets the requirements established in the Code of Virginia, for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma.

ADULT MOTION PICTURE ARCADE

A place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or specified "anatomical areas."

ADULT MOTION PICTURE THEATER

An establishment, with a capacity of 50 or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown; and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons.

AGRICULTURAL SERVICE

Service provided specifically for the agricultural community which is not directly associated with a farm operation. Included in this use type would be servicing of agricultural equipment, independent equipment operators, and other related agricultural services.

ANTIQUE SHOP

A place offering primarily antiques for sale. An antique for the purposes of this chapter shall be a work of art, piece of furniture, decorative object, or the like, of or belonging to the past, at least 30 years old.

ASSEMBLY HALL

A building, designed and used primarily for the meeting or assembly of a large group of people for a common purpose. Typical uses include meeting halls, union halls, bingo halls, and catering or banquet facilities.

AUTOMOBILE DEALERSHIP, NEW

An establishment that uses building, land area or other premises for the display of new and used automobiles, trucks, vans, or motorcycles for sale or rent, including any warranty repair work and other major and minor repair service conducted as an accessory use.

AUTOMOBILE DEALERSHIP, USED

A lot or establishment where three or more used motor vehicles, including automobiles, trucks, and motorcycles are displayed at one time for sale.

BUSINESS SUPPORT SERVICE

An establishment or place of business engaged in the sale, rental or repair of office equipment, supplies and materials, or the provision of services used by office, professional and service establishments. Typical uses include office equipment and supply firms, small business machine repair shops, convenience printing and copying establishments, as well as temporary labor services.

BUSINESS/TRADE SCHOOL

An establishment providing education or training in business, commerce, language, or other similar activity or occupational pursuit, and not otherwise defined as an educational facility, either primary and secondary, or college and university.

CONSUMER REPAIR SERVICE

An establishment primarily engaged in the provision of repair services to individuals and households, rather than businesses, but excluding automotive and equipment repair use types. Typical uses include appliance repair shops, shoe repair, watch or jewelry repair shops, or repair of musical instruments.

DANCE HALL

An establishment in which more than 10% of the total floor area is designed or used as a dance floor, or where an admission fee is directly collected or some other form of compensation is obtained for dancing.

DAY CARE CENTER

A facility operated for the purpose of providing care, protection and guidance to 13 or more individuals during only part of a twenty-four hour day. This term includes nursery schools, preschools, day care centers for individuals, and other similar uses but excludes public and private educational facilities or any facility offering care to individuals for a full twenty-four-hour period.

FLEA MARKET

A building or lot used for the regular or periodic display of new or used merchandise for sale. Flea markets are typically characterized by one or more vendors who display goods on tables and/or in small booths

FUNERAL SERVICES

Establishments engaged in undertaking services such as preparing the dead for burial, and arranging and managing funerals. Typical uses include mortuaries and crematories.

ITINERANT MERCHANT

Any person engaged temporarily in the retail sale, lease, or rental of goods, wares, or merchandise and who for the purpose of conducting such business, displays such goods, wares, or merchandise to the public outside a building on property in which such person holds a legal temporary interest.

KENNEL, COMMERCIAL

The boarding, breeding, raising, grooming or training of dogs, cats, or other household pets of any age not owned by the owner or occupant of the premises, for commercial gain.

LAUNDRY

Establishments primarily engaged in the provision of laundering, cleaning or dyeing services other than those classified as "personal services." Typical uses include bulk laundry and cleaning plants, diaper services, or linen supply services.

MANUFACTURED HOME SALES

An establishment primarily engaged in the display, retail sale, rental, and minor repair of new and used manufactured homes, parts, and equipment.

MOBILE FOOD UNIT

A food establishment contained in a wheeled vehicle that is readily moveable, including but not limited to trailers, trucks, and vans; and is licensed by the Department of Motor Vehicles and has a valid permit from the Environmental Health Division of the Virginia Department of Health. These units are also known as "food trucks".

MODULAR HOME SALES

A site used for the construction and display of model modular homes, including a sales office and incidental storage associated with the construction of the model homes.

PAWN SHOP

An establishment engaged in the loaning of money on the security of property pledged to a pawnbroker and the incidental sale of such property.

PERSONAL IMPROVEMENT SERVICES

Establishments primarily engaged in the provision of informational, instructional, personal improvements and similar services. Typical uses include driving schools, health spas or physical fitness studios, reducing salons, dance studios, handicraft and hobby instruction.

PERSONAL SERVICES

Establishments or places of business engaged in the provision of frequently or recurrently needed services of a personal nature. Typical uses include beauty and barber shops; massage clinics; grooming of pets; seamstresses, tailors; florists; and laundry dry cleaning services.

PRIVATE FARMER'S MARKET - See end of document**RECREATIONAL VEHICLE SALES AND SERVICE**

An establishment engaged in the retail sales of recreational vehicles, boats, and jet skis, including service and storage of vehicles parts and related accessories.

STUDIO, FINE ARTS

A building, or portion thereof, used as a place of work by a sculptor, artist, photographer or similar artisan.

STUDIO, TATTOO

An establishment where tattooing and or body piercing is performed as the principal business activity

TRAVEL CENTER

An establishment containing a mixture of uses which cater to the traveling public and in particular motor freight operators. A travel center might include such uses as fuel pumps, restaurants, overnight accommodations, retail sales related to the motor freight industry, and similar uses.

§ 286-202.12 Industrial use types.**CONSTRUCTION YARD**

An establishment primarily engaged in construction activities, including outside storage of materials and equipment. Typical uses are building contractor's yards.

CUSTOM MANUFACTURING

Establishments primarily engaged in the on-site production of goods by hand manufacturing, within enclosed structures, involving the use of hand tools, or the use of mechanical equipment commonly associated with residential or commercial uses.

RECYCLING CENTER

A receptacle or facility used for the collection and storage of recyclable materials designed and labeled for citizens to voluntarily take source separated materials for recycling.

TRANSPORTATION TERMINAL

A facility for loading, unloading, and interchange of passengers, baggage, and incidental freight or package express between modes of ground transportation, including bus terminals, railroad stations, and public transit facilities.

TRUCK TERMINAL

A facility for the receipt, transfer, short-term storage, and dispatching of goods transported by truck. Included in the use type would be express and other mail and package distribution facilities, including such facilities operated by the U.S. Post Office.

§ 286-202.14 Miscellaneous use types.

AMATEUR RADIO TOWER

A structure on which an antenna is installed for the purpose of transmitting and receiving amateur radio signals erected and operated by an amateur radio operator licensed by the Federal Communications Commission (FCC).

PARKING FACILITY, SURFACE/STRUCTURE

A site used for surface parking or a parking structure unrelated to a specific use which provides one or more parking spaces together with driveways, aisles, turning and maneuvering areas, incorporated landscaped areas, and similar features meeting the requirements established by this ordinance. This use type shall not include parking facilities accessory to a permitted principal use.

TOWER

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas. The term includes but is not limited to radio and television transmission towers, microwave towers, common-carrier towers, and cellular telephone and wireless communication towers. Tower types include, but are not limited to monopoles, lattice towers, wooden poles, and guyed towers. Excluded from this definition are amateur radio towers, which are otherwise defined.

§ 286-410.66 Private farmers' market.

A. General standards.

- (1) One private farmers' market is allowed on a lot or parcel.
- (2) A private farmers' market must be at least 1/2 mile from any other private farmers' market, regardless of days of operation.

- (3) A private farmers' market must have a minimum of five vendors present as averaged over the season the market is in operation.
- (4) Market size is limited to no more than 30 vendors on-site at any one time.
- (5) All vendors at the market must display the name(s) of the producer(s) and the location(s) where goods were grown, raised or produced.
- (6) There may be no more than three mobile food units, which shall not be included in the calculations specified in Subsection A(3) and (4).
- (7) The market may be advertised by a temporary banner sign of no greater than 32 square feet in area that may be displayed on market days and the day before market days. The location of the banner and how the banner will be displayed shall be shown in the market plan. The banner shall be on the parcel where the market is conducted and cannot be in the City right-of-way. The banner for the private farmers' market shall not be considered as temporary signage allowed by the commercial uses on the same parcel.
- (8) Market facilities shall be temporary in nature and use the existing parking and infrastructure of the site.
- (9) All market materials shall be removed at the conclusion of the market day.
- (10) A market plan shall be submitted to the Administrator for review and approval prior to the market's opening. The plan shall be updated in March of each calendar year and at any time during the year when a change in the vendor list occurs. The market plan shall include the following:
 - (a) Written permission from the property owner(s), executed on a form the Administrator prepares, which shall include provisions holding the City harmless and indemnifying the City from any damages or losses.
 - (b) The name and contact information for the private farmers' market contact person.
 - (c) The proposed layout of the private farmers' market, including, booth locations, mobile food unit locations, signage, vendor parking, access for vendors and patrons, trash collection locations, and adequate safety measures to separate market patrons from vehicular traffic. Any parking intended to specifically serve the private farmers' market on market days must be shown on the market plan.
 - (d) A list of all vendors which includes vendor name, products sold, and contact information.
 - (e) An assessment of the existing and required parking for the on-site commercial uses and the

number of parking spaces unavailable during market operations. Private farmers' markets may occupy required parking but shall not have such an impact as to create traffic safety or circulation problems or negatively impact the parking for existing commercial uses on the property.

- (f) A schedule of operation to include number of weeks, day, and hours. These may be modified as needed with a two-week written notice to the Administrator.